



This document is scheduled to be published in the Federal Register on 11/17/2015 and available online at <http://federalregister.gov/a/2015-28918>, and on FDsys.gov

[Billing Code: 6750-0-01S]

FEDERAL TRADE COMMISSION

16 CFR Parts 500 and 502

RIN 3084-AB33

Rules, Regulations, Statements of General Policy or Interpretation and Exemptions Under the Fair Packaging and Labeling Act

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule.

SUMMARY: The Commission amends the rules and regulations promulgated under the Fair Packaging and Labeling Act (“Rules”) to: modernize the place-of-business listing requirement; incorporate a more comprehensive metric chart; address the use of exponents with customary inch/pound measurements; delete outdated prohibitions on retail price sales representations; and acknowledge the role of the weights-and-measures laws of individual states.

DATES: This rule is effective on **[Insert date 30 days after the date of publication in the FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of **[Insert date 30 days after the date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Relevant portions of the proceeding, including this document, are available at the Commission’s website, www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Megan E. Gray, Attorney, (202) 326-3408, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

Congress enacted the Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, (“FPLA” or “Act”) in 1966 to enable consumers to obtain accurate package quantity information to facilitate value comparisons and prevent unfair or deceptive packaging and labeling of “consumer commodities.”¹ Pursuant to the FPLA, the Commission promulgated the Rules, which generally concern products consumed during household use. However, several categories of these products are exempt from FTC regulations under the FPLA.² Moreover, the FTC has excluded certain others from the Rules.³

Section 1453 of the Act directs the Commission to issue regulations requiring that all “consumer commodities” be labeled to disclose: (a) the identity of the commodity (*e.g.*, detergent, sponges), which must appear on the principal display panel of the commodity in conspicuous type and position so that identity is easy to read and understand;⁴ (b) the name and

¹ Consumer commodities are any food, device, or cosmetic, and any other article, product, or commodity that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. 15 U.S.C. 1459(a). The Food and Drug Administration (“FDA”) administers the FPLA with respect to food, drugs, cosmetics, and medical devices. 15 U.S.C. 1454(a); 15 U.S.C. 1456(a).

² 15 U.S.C. 1459(a)(1-5) (excluding, among other products, specified categories of meat, poultry, tobacco, insecticide, fungicide, drug, alcohol, and seed products).

³ 16 CFR 503.2, 503.5. Many products outside the scope of the FPLA and the Rules nevertheless fall within the purview of individual state laws. 15 U.S.C. 1461. *See also* National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality (2015 ed.) (compilation of state and federal laws and regulations pertaining to product labeling and packaging).

⁴ 16 CFR 500.4.

place of business of the product’s manufacturer, packer, or distributor;⁵ and (c) the net quantity of contents in terms of weight, measure, or numerical count, with such disclosure’s placement and content in accordance with the Rules.⁶ The Rules detail how units of weight or mass and measure must be stated, and require use of both U.S. (*e.g.*, pounds, feet, and gallons) and metric measures.⁷ The Rules also require net quantity disclosures for packages containing more than one product or unit, including: (a) “multi-unit packages”;⁸ (b) “variety packages”;⁹ and (c) “combination packages.”¹⁰

In addition, the Act grants the FTC authority to issue rules to prevent consumer deception and facilitate value comparisons.¹¹ The FTC has used this authority to address three types of

⁵ 16 CFR 500.5.

⁶ 16 CFR 500.6(b). The Office of Weights and Measures of the National Institute of Standards and Technology, U.S. Department of Commerce, is authorized to promote, to the greatest practical extent, uniformity in state and federal regulation of the labeling of consumer commodities. 15 U.S.C. 1458(a)(2).

⁷ Congress amended the FPLA in 1992 to require use of metric measurements, in addition to customary inch/pound measures. Pub. L. 102-245 (February 14, 1992); Pub. L. 102-329 (August 3, 1992). In 1994, the FTC modified its regulations accordingly. 59 FR 1872 (Jan. 12, 1994).

⁸ 16 CFR 500.27.

⁹ 16 CFR 500.28.

¹⁰ 16 CFR 500.29.

¹¹ 15 U.S.C. 1454(c). This discretionary authority enables the FTC to address four situations: (1) setting standards for characterizing package sizes to supplement the net quantity statement (*e.g.*, establishing a uniform size for a single sheet of toilet paper); (2) regulating packaging that claims a product price is lower than its customary retail price; (3) requiring labels to use common names or listing ingredients in order of decreasing prominence; and (4) preventing nonfunctional slack-fill. 15 U.S.C. 1454(c).

representations: “cents-off,”¹² “introductory offer,”¹³ and “economy size.”¹⁴

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) in March 2014 seeking comment on the economic impact of, and the continuing need for, the Rules; the benefits of the Rules to consumers; and any burdens the Rules place on businesses.¹⁵

In response, the Commission received fifteen comments. Based on these comments, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) on February 2, 2015, proposing several amendments to modernize the place-of-business listing requirement, incorporate a more comprehensive metric chart, address the use of exponents with customary inch/pound measurements, delete prohibitions on certain retail price sale representations, and acknowledge the role of weights-and-measures laws of individual states.¹⁶

The Commission received nine comments in response to the NPRM, one from a nonprofit association representing officials and consumers affected by the Rules and eight from

¹² A cents-off representation is one in which “cents-off” or a similar term is used to indicate that the consumer commodity is being offered for sale at a price lower than the ordinary and customary retail price. 16 CFR 502.100.

¹³ An introductory offer is one in which “introductory offer” or a similar phrase is used to indicate that the consumer commodity is being offered for sale at a price lower than the ordinary and customary retail price. 16 CFR 502.101. The Rules prohibit introductory offers in a trade area for a duration in excess of six months. 16 CFR 502.101(b)(3).

¹⁴ An economy size representation is one in which “economy size” or similar phrase is used to indicate that the consumer commodity has a retail sale price advantage due to the size of that package or the quantity of its contents. 16 CFR 502.102.

¹⁵ 79 FR 15272 (March 19, 2014).

¹⁶ 80 FR 5491 (February 2, 2015).

individuals.¹⁷ The nonprofit association approved of the Commission’s proposals.¹⁸ One individual approved of the Commission’s proposal to modernize the place-of-business listing requirement and acknowledge the role of weights-and measures of individual states; he also suggested the Commission amend Section 500.5(b) to delete the Rules’ “actual corporate name” requirement, as well as amend the Rules to acknowledge that FDA labeling rules could be relevant to an entity’s FPLA compliance and that the FDA has not finalized its proposal to permit metric measurements.¹⁹ One individual approved of the Commission’s proposal to modernize the place-of-business listing requirement; she did not address the Commission’s other proposals.²⁰ Six individuals discussed extraneous topics not material to this rulemaking.²¹

II. PROCEDURES FOR PROMULGATING REGULATIONS UNDER FPLA

Commission Rule 1.26 sets forth the procedures for promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act; it governs these FPLA amendments.²² The

¹⁷ The Commission posted the comments at <https://www.ftc.gov/policy/public-comments/initiative-599>. Each comment has a number correlating to the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by that number.

¹⁸ Packaging and Labeling Subcommittee of the National Conference on Weights and Measures (“NCWM”) (1).

¹⁹ Schindler (3).

²⁰ Lynn (5).

²¹ Willey (2), Signer (4), Nagpal (6), Gordon (7), Vita (8), Anonymous (9). For example, Gordon (7) commented on labels for genetically modified foods.

²² 16 CFR 1.26(f).

effective date of any regulations issued under the FPLA will not be prior to 30 days after publication in the Federal Register.²³

III. AMENDMENTS

Based on its consideration of the record, the Commission amends the Rules as explained below.

A. Modernize the Place-of-Business Listing Requirement

Currently, the Rules require a label to conspicuously state the name and place of business of the manufacturer, packer, or distributor and further specify that the place of business statement contain the street address, city, state, and ZIP code. The street address, however, may be omitted if it is listed in a current city or telephone directory.²⁴ The Commission proposed revising this exception to permit a business to omit the street address if it is listed in any readily accessible, well-known, widely published, and publicly available resource, including but not limited to a printed directory, electronic database, or website. The inclusion of “any readily accessible, widely published, and publicly available resource” in the exception provides flexibility and is intended to encompass new technologies that meet these requirements.

All the comments addressing this proposal supported it.²⁵ One individual suggested that the Commission delete the requirement that certain business entities use their “actual corporate name” (as opposed to their fictitious or doing-business-as name). However, he acknowledged that the requirement did not burden business and he did not demonstrate any benefit associated

²³ 16 CFR 1.26(f).

²⁴ 16 CFR 500.5(a)-(e). The Act itself requires the label to include the place of business, but does not specify to what level of detail. 15 U.S.C. 1453(a)(1).

²⁵ NCWM (1), Schindler (3), Lynn (5).

with his suggested amendment.²⁶ Accordingly, the Commission adopts its proposed amendment without change.

B. Incorporate a More Comprehensive Metric Chart

Section 500.19(a) currently contains an incomplete metric conversion chart that fails to list possible, albeit uncommon, conversion factors that a packager might use, such as weight expressed in grain, or length expressed in rods. The Commission proposed to correct this omission by deleting the current chart and incorporating by reference the complete metric conversion chart published in National Institute of Standards and Technology (NIST) Handbook 133, *Checking the Net Contents of Packaged Goods* (2015 ed., Exhibit E, pgs. 135-157).²⁷ Members of the public can access the Handbook online at NIST's website, www.NIST.gov.

The only comment addressing this proposal approved its adoption.²⁸ Accordingly, the Commission adopts this proposed amendment without change for the reasons explained in the NPRM.

C. Address the Use of Exponents with Customary Inch/Pound Measurements

In the current rule (Section 500.22), exponents are not listed for customary inch/pound measurements, but are included in the metric examples listed in Section 500.23(b) (*e.g.*, cubic

²⁶ Schindler (3).

²⁷ The NPRM proposed to incorporate a metric conversion chart from NIST Handbook 130, but the Final Rule incorporates the metric conversion chart from NIST Handbook 133. NIST Handbook 133's metric conversion chart is consistent with the table provided in NIST Handbook 130, but provides a more comprehensive listing of metric conversion factors. This revision does not change the obligations of entities subject to the Rules. Therefore, pursuant to the Administrative Procedure Act, the Commission finds "good cause" for foregoing additional public comment because this change is merely ministerial and further public comment is "unnecessary." 5 U.S.C. 553(b)(3)(B).

²⁸ NCWM (1).

centimeter – cm³). Because exponents are not listed in the customary inch/pound measurements, affected businesses might think they are not permitted, although they are common in the marketplace and historically sanctioned by the Office of Weights and Measures of the National Institute of Standards and Technology, U.S. Department of Commerce, which is authorized to promote uniformity in labeling regulations.²⁹ Therefore, the Commission proposed to clarify the Rules to expressly permit exponents with customary inch/pound measurements (*e.g.*, cubic inches – in³).

The only comment addressing this proposal approved its adoption.³⁰ Accordingly, the Commission adopts this proposed amendment without change.

D. Delete Prohibitions on Certain Retail Price Sales Representations

The Commission proposed to eliminate sections addressing when and how a packager or labeler represents a commodity to be “cents off,” an “introductory offer,” or “economy size.”³¹ The Commission originally promulgated these provisions to curtail certain price representations that were commonly used in a deceptive manner during the 1960s and 1970s. However, these representations are now rarely seen in the modern marketplace. Indeed, they have been absent for some time.³² Should they re-appear, the Commission has other tools at its disposal to ensure they are not used deceptively.

²⁹ NCWM (1).

³⁰ NCWM (1).

³¹ 15 U.S.C. 1454(c)(2).

³² In 1997, the U.S. Food and Drug Administration revoked similar regulations for “cents off” and economy size representations, on the grounds that such representations were no longer used in the marketplace. 62 FR 39439 (1997).

The only comment addressing this proposal approved its adoption.³³ Accordingly, the Commission adopts this proposed amendment without change.

E. Acknowledge the Role of Weights-and-Measures Laws of Individual States

Many products outside the Commission’s FPLA purview fall within the purview of weights-and-measures laws of individual states; amending the Rules to acknowledge the state role would aid compliance efforts by alerting businesses that state laws may apply. Therefore, the Commission proposed to amend the Rules to state “[m]any products exempted through proceedings under section 5(b) of the Act and section 500.3(e) of this chapter or excluded under part 503 of this chapter nonetheless fall within the purview of the weights-and-measures laws of individual states.”

The two comments addressing this proposal approved its adoption.³⁴ One, however, favored further clarification to indicate that FDA also has a role in FPLA regulation, but did not provide any indication that entities were unfamiliar with this fact. Accordingly, the Commission adopts this proposed amendment without change.

IV. PAPERWORK REDUCTION ACT

The Rules contain various existing information collection requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (“PRA”).³⁵ Because the amendments do not trigger additional recordkeeping, disclosure, or reporting requirements, there is no incremental burden under the PRA. *See* 44 U.S.C. 3501-3521. None of

³³ NCWM (1).

³⁴ NCWM (1), Schindler (3).

³⁵ 44 U.S.C. 3501 *et seq.* On April 6, 2015, OMB granted clearance through April 30, 2018, for these requirements and the associated PRA burden estimates. The OMB control number is 3084-0110.

the comments disputed the PRA analysis in the NPRM.

V. REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (“RFA”)³⁶ requires the Commission to conduct an initial and final analysis of the anticipated economic impact of the amendments on small entities.³⁷ The purpose of a regulatory flexibility analysis is to ensure the agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA³⁸ provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes the amendments will not have a significant economic impact on small entities, although they may affect a substantial number of small businesses. The amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature.

In the Commission’s view, the amendments will not have a significant or disproportionate impact on the costs small entities incur in manufacturing, distributing, or selling consumer commodities. Indeed, the Rule revisions provide increased flexibility for companies complying with the Rules. Therefore, the Commission certifies that amending the Rules will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the amendments will not have a

³⁶ 5 U.S.C. 601-612.

³⁷ The Commission previously conducted an RFA analysis of the Rules. 59 FR 1862 (Jan. 12, 1994).

³⁸ 5 U.S.C. 605.

significant impact on a substantial number of small entities, the Commission nonetheless has determined it is appropriate to publish a final regulatory flexibility analysis to ensure the impact of the amendments on small entities is fully addressed. Therefore, the Commission prepared the following analysis:

A. Need for and Objective of the Amendments

The objective of the amendments is to clarify and update the Rules in accordance with marketplace practices. The Act authorizes the Commission to implement its requirements through the issuance of rules. The amendments clarify and update the Rules, and provide covered entities with additional labeling options without imposing significant new burdens or additional costs.

B. Significant Issues Raised in Public Comments

In the NPRM's initial regulatory flexibility analysis, the Commission concluded that the proposed amendments would not have a significant or disproportionate economic impact (including compliance costs) on small entities that produce consumer commodities other than those commodities falling within the authority of other agencies or otherwise outside the Act's or Rules' scope. None of the comments disputed the initial regulatory flexibility analysis. The Commission did not receive any comments from the Small Business Administration.

C. Small Entities to Which the Amendments Will Apply

The amendments cover every company in the economy that produces consumer commodities other than those commodities falling within the authority of other agencies or otherwise outside the Act's or Rules' scope. Based on available information, it is not feasible for the Commission to estimate the number of entities within this class of industry that are also small

companies within the meaning of the Regulatory Flexibility Act.³⁹ A substantial number of these entities likely qualify as small businesses. Nevertheless, the Commission estimates that the amendments will not have a significant impact on small businesses because the amendments do not impose any significant new obligations. The Commission sought, but did not receive, comment with regard to the estimated number or nature of small business entities, if any, for which the amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply

As explained earlier in this document, the amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature. The small entities potentially covered by these amendments will include all such entities subject to the Rules. The professional skills necessary for compliance with the Rules as modified by the amendments will include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels and keep records.

E. Significant Alternatives to the Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, because the amendments expand labeling options to accommodate the rise of online media, remove unnecessary price statement prohibitions, or are technical in nature. In addition, these changes provide new flexibilities for small entities by, for example, allowing regulated entities to omit a business address from a label if the address is readily available in an online directory or other website. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary

³⁹ 5 U.S.C. 601(3).

or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission sought, but did not receive, comments on the need, if any, for alternative compliance methods to reduce the economic impact of the Rules on small entities.

None of the comments addressed the Regulatory Flexibility Act analysis in the NPRM.

VI. INCORPORATION BY REFERENCE

Consistent with 1 CFR Part 51, the Commission is incorporating the complete metric conversion chart published in the National Institute of Standards and Technology (NIST) Handbook 133, Checking the Contents of Packaged Goods (2015 ed., Exhibit E, pgs. 135-157), as described in Section III.B above. The metric conversion chart provides a complete and up-to-date list of metric conversion factors for packagers.

The metric conversion chart is reasonably available to interested parties. Members of the public can access the metric conversion chart online at NIST's website, NIST.gov.

List of Subjects in 16 CFR Parts 500 and 502

Fair Packaging and Labeling Act, Incorporation by reference, Labeling, Packaging and containers, Trade practices.

Under 15 U.S.C. 1454-1455 and as discussed in the preamble, the Federal Trade Commission amends title 16 of the Code of Federal Regulations by amending parts 500 and 502 as follows:

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for part 500 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455.

2. In § 500.3, revise paragraph (d) to read as follows:

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.

* * * * *

(d) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act, shall bear a label specifying the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and the net quantity per serving, use or application, where there is a label representation as to the number of servings, uses, or applications obtainable from the commodity. Many products exempted through proceedings under section 5(b) of the Act and section 500.3(e) of this chapter or excluded under part 503 of this chapter nonetheless fall within the purview of the weights-and-measures laws of the individual states.

* * * * *

3. Revise § 500.5(c) to read as follows:

§ 500.5 Name and place of business of manufacturer, packer or distributor.

* * * * *

(c) The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if it is listed in a readily accessible, widely published, and publicly available resource, including but not limited to a printed directory, electronic database, or website.

* * * * *

4. In § 500.19, revise paragraph (a) to read as follows:

§ 500.19 Conversion of SI metric quantities to inch/pound quantities and inch/pound quantities to SI metric quantities.

(a) For calculating the conversion of SI metric quantities to and from customary inch/pound quantities, the conversion chart published in the following handbook shall be employed: National Institute of Standards and Technology (NIST) Handbook 133, Checking the Net Contents of Packaged Goods, Appendix E - General Tables of Units of Measurements, 2015 Edition, adopted November 2014. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of NIST Handbook 133 at the National Institute of Standards and Technology's website, <http://www.nist.gov/pml/wmd/pubs/hb133.cfm>. You may inspect a copy at FTC Library, (202) 326-2395, Federal Trade Commission, Room H-630, 600 Pennsylvania Avenue NW, Washington, DC 20580. or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

* * * * *

5. Revise § 500.22 to read as follows:

§ 500.22 Abbreviations.

The following abbreviations and none other may be employed in the required net quantity declaration:

Inch—in.

Feet or foot—ft.

Fluid—fl.

Liquid—liq.

Ounce—oz.

Gallon—gal.

Pint—pt.

Pound—lb.

Quart—qt.

Square—sq.

Weight—wt.

Yard—yd.

Avoirdupois—avdp.

Cubic—cu.

NOTE: Periods and plural forms shall be optional. Exponents are permitted.

**PART 502—REGULATIONS UNDER SECTION 5(C) OF THE FAIR PACKAGING
AND LABELING ACT**

6. The authority citation for part 502 is revised to read as follows:

Authority: 15 U.S.C. 1454, 1455.

§§ 502.100, 502.101, and 502.102 [Removed and Reserved]

7. Remove and reserve §§ 502.100, 500.101, and 502.102.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2015-28918 Filed: 11/16/2015 8:45 am; Publication Date: 11/17/2015]